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Mailed: DEC 3 2004

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In re application of  
Akitsuka Ninjouji et al.  
Serial No. 09/437,111  
Filed: November 09, 1999  
For: SPARKLING LOW ALCOHOLIC SAKE  
AND PRODUCING METHOD THEROF

DECISION ON  
PETITION

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a), filed July 06, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of June 21, 2004, for failure to timely file a proper reply to the Office letter mailed May 03, 2003 be withdrawn since the applicants period for response had yet to expire before the mailing of the Notice of Abandonment of June 21, 2004. (Note a Response to the Office Action along with a Petition for Extension of Time under 37 C.F.R. 1.136(a) and filing fee for the same were submitted along with this Petition for Rescindment of Abandonment)

**DECISION**

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented reveals that applicants' time period for response had yet to expire as evidenced by the statement within the Office action that "applicant is given a shortened statutory period of One Month or thirty days from the mailing date of this letter whichever is longer to submit a complete reply. This statutory period supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 C.F.R. 1.136(a)." Thus a reply by applicant was due by June 03, 2004 and could have been extended up to five months under 37 C.F.R. 1.136(a). A Notice of Abandonment was mailed June 21, 2004. This Notice of Abandonment was mailed within the period wherein Applicant could have extended his time period for response. Thus, the Notice of Abandonment was premature in view of the time period set for response in the Office action mailed May 03, 2004.

Accordingly, any holding of abandonment for failure to timely file a proper reply to the Office letter mailed May 03, 2004 is hereby vacated, and the application is returned to pending status.

The application shall be forwarded to the examiner for entry, processing and consideration of the reply filed July 06, 2004.

The Petition is **GRANTED**.

*Mr Stone*

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